

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1106 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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F I KADIYANI

Versus

STATE OF GUJARAT

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Appearance:

MR VS MEHTA for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1 (absent)

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 24/04/96

ORAL JUDGEMENT

Order of punishment of withholding of one increment with future effect is under challenge in this petition.

The facts, relevant to consider the contentions raised are as under. Petitioner, an ex-Saurashtra Government employee serving as Social Education Organiser, was promoted as Block Development Officer

(Class II) on 1.10.62. The said cadre, on advent of the Panchayat Raj was renamed as Taluka Development Officer from 1.4.63. Petitioner was on deputation to Panchayat Organisation. In discharge of his duty, he visited village Kodidra to inspect the record on 16.5.67. It is alleged that there he expressed a desire to eat a hen. The same was provided, but he did not pay for the same. Alleging this to be a misconduct, an enquiry was held and ultimately he came to be held guilty and was imposed punishment referred above. This order of punishment is challenged in this petition under Article 226 of the Constitution of India.

One of the grounds of challenge to the order of punishment is that the same is bad inasmuch as the petitioner is not given proper opportunity to defend his case and he was not provided with the report of the Enquiry Officer, though specifically asked for. This ground is made out specifically in ground (C). The relevant part reads as under:-

: ... In the instant case, the departmental enquiry lasted for more than 13 years in utter disregard to the aforesaid circular. The chargesheet was issued on 25.1.71 and examination of witnesses was over on 14.7.72 and the final defence reply was submitted on 31.7.72. The findings of the enquiry officer was sent to the disciplinary authority on 21.11.92 .... and despite specific demand for the report, the same is not supplied to the petitioner".

To substantiate his argument, Mr.Mehta has relied on a judgment in the case of U.P. Government vs.Sabir Hussain (A.I.R. 1975 SC 2045), wherein the relevant observations read as under:-

"Thus the broad test of "reasonable opportunity" is, whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage, or, in the alternative, to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him".

He, therefore, contended that the order of punishment of withholding one increment with future effect is illegal and bad.

Though the respondents are duly served, they are not represented by any Advocate. Mr.Doshit of M/s.M.G. Doshit & Co. was present in the court when the matter

was called out and he stated before the court that the papers are entrusted to one Mr.Champaneri, learned A.G.P. Learned A.G.P. Mr.Champaneri is not present in the court. Learned A.G.P. Mr.S.P.Dave, who is present in the court, states that he has no instructions to appear in the matter. In this state of affairs, the court is required to proceed ex-parte against the Government.

In the instant case, the Supreme Court has settled the law to the effect that the copy of the report of the Enquiry Officer is required to be furnished to the delinquent and if not furnished despite demand, that affects the right of the delinquent to have reasonable opportunity to defend his case. Though the specific averments are made with specific dates of demand, not only the affidavit-in-reply is not filed, but the Advocates on behalf of the respondents are also not present. In view of this fact and in view of the observation of the Supreme Court in the case of U.P. Government (Supra), the order of punishment is required to be quashed and set aside. As the petition is liable to be allowed on this point, no other contention raised by the learned Advocate for the petitioner is considered.

In the result, the petition is allowed. Rule made absolute. Order of punishment dated 10.1.84 is quashed and set aside. Rule made absolute with costs. Cost is quantified at Rs.1000/- and shall be paid by the Officer who had to comply with the request of the petitioner to supply him the copy of the inquiry report.

Copy of this order be sent to the office of the Hon'ble Chief Minister, Chief Secretary, General Administration Department and Secretary, Legal Department, in order to make them aware regarding the absences of the solicitors and A.G.Ps.

After the dication is over, learned A.G.P. Mr.Champaneri appeared before the court and stated that he has not been handed over any of the papers of this matter by M/s.M.G.Doshi & Co., Solicitors, or by Mr.Doshit personally.

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